

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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Federal Communications Commission
Office of Secretary

In the Matter of)
)
Amendment of Section 2.106 of the) ET Docket 95-18
Commission's Rules to Allocate Spectrum)
at 2 GHz for Use by the Mobile-Satellite)
Service)

To: The Commission

**OPPOSITION OF APCO TO MSS COALITION
PETITION FOR PARTIAL RECONSIDERATION**

The Association of Public-Safety Communications Officials-International, Inc. ("APCO"), by its attorneys, hereby submits the following Opposition to the Petition for Partial Reconsideration of the MSS Coalition¹ in the above-captioned proceeding. Among other matters, the MSS Coalition is asking the Commission to reverse its decision in the First Report and Order and Further Notice of Proposed Rulemaking ("First Report and Order") to require mobile satellite service (MSS) licensees in the 2 GHz band to pay the cost of relocating incumbent fixed microwave licensees, a substantial portion of which are state and local government public safety agencies.²

¹ ICO Global Communications, COMSAT Corporation, Personal Communications Satellite Corporation, Celsat America, Inc., and Hughes Space and Communications International.

² APCO will also be filing comments in response to the Further Notice of Proposed Rulemaking on June 23, 1997.

I. Introduction and Background

APCO, founded in 1935, is the nation's oldest and largest public safety communications organization, with over 12,000 members involved in all aspects of the management and operation of police, fire, emergency medical, forestry conservation, highway maintenance, local government, emergency management, and other public safety communications facilities. Many of these public safety agencies operate critical microwave communications links in the 2130-2150/2180-2200 MHz band, which provide the "backbone" for their wide-area mobile radio communications systems. The Commission previously determined that there were over 4,000 microwave facilities licensed to public safety agencies in the 2130-2150/2180-2200 MHz band (more than twice the number of public safety facilities as are in the 1850-1990 MHz "PCS" band).³ Other microwave incumbents in the band include utilities, railroads, and petroleum companies.

The Commission, in ET Docket 92-9, reallocated the 1850-1990/2110-2200 MHz (2 GHz) bands for new emerging telecommunications technologies. However, because the bands contain large numbers of incumbent microwave facilities, the Commission's rules require that licensees of new technologies in the 2 GHz bands must compensate incumbents for the cost of relocating to other frequencies. The compensation for relocation is to be determined through a negotiation process with specified voluntary and

³ FCC Office of Engineering & Technology, "Creating New Technology Bands for Emerging Technologies" (January 1992). The number of current public safety facilities is probably less than 4,000 due to attrition and certain system-wide replacements of microwave networks containing both 1850-1990 and 2110-2200 MHz links. In addition, new microwave licenses are no longer being granted on a primary basis in the 2 GHz bands. Nevertheless, there are still large numbers of public safety incumbents in the band, often operating on relatively new microwave equipment.

mandatory negotiation periods. 47 C.F.R. § 101.69-101.81. This process has been in effect for three years with regard to the Personal Communications Service (“PCS”) band (1850-1990 MHz), and has led to the expeditious clearing of incumbent microwave facilities throughout the nation.

In the First Report and Order in this proceeding, the Commission reallocated the 2165-2200 MHz band for MSS downlinks, which includes one-half of the 2130-2150/2180-2200 fixed microwave band.⁴ The Commission concluded that it “will provide for MSS sharing with, and any necessary relocation of, [fixed microwave] incumbents in accordance with the policies set forth in our Emerging Technologies proceeding.” First Report and Order at ¶ 42. The Commission’s First Report and Order also included a Further Notice of Proposed Rulemaking seeking comments regarding specific relocation procedures to be used for the frequencies reallocated to MSS. However, the Commission affirmed the basic principal that new emerging technology licensees (*i.e.*, MSS), not incumbents, must bear the cost of relocation. APCO strongly opposes the MSS Coalition’s request for reconsideration of that determination.

II. MSS Licensees Must Pay the Cost of Relocating Fixed Microwave Incumbents

The MSS Coalition’s entire argument rests on the potential impact of the relocation obligation on MSS providers. However, they completely ignore the consequences for current public safety users of the 2 GHz bands, who were there first and have spent hundreds of millions of taxpayer dollars to build imbedded communications

⁴ Each microwave “path” uses two paired frequencies from both the 2130-2150 MHz and 2180-2200 MHz bands. Any relocation of the path requires replacing both frequencies.

networks that play a critical role in protecting the safety of life and property. The MSS Coalition's blind, self-serving arguments do not warrant any reconsideration of the Commission's decision in the First Report and Order. PCS licensees had to bear the cost of relocation, and so must MSS licensees. Any other result would give MSS an unfair advantage at the expense of state and local government taxpayers.

The MSS Coalition argues that MSS is different from PCS, and therefore should not be subject to any relocation obligations. However, from the public safety incumbent's perspective, the differences between MSS and PCS are irrelevant. In either case, it is taxpayers who would bear the cost of relocation were it not for the Commission's rules being challenged by the MSS Coalition. Any new 2 GHz licensee, whether it is PCS, MSS, or some other "new emerging telecommunications technology," must pay the cost of relocating incumbents.

The MSS Coalition claims that it will be a national service, unlike PCS, making it difficult to negotiate local relocation agreements with incumbents around the country. However, the MSS Coalition overstates the importance of this potential issue. While the number of microwave incumbents is large, they are easily identifiable and will be quite familiar with the relocation process. Many, if not most, have already negotiated relocation of 1850-1990 MHz paths. That familiarity with the process should facilitate negotiations. Also, there are fewer incumbents than the MSS Coalition may realize, as most incumbents operate multi-path systems, allowing for "one-stop-shopping" in the negotiation process.⁵

⁵ The MSS Coalition also overlooks an obvious advantage MSS has over PCS. MSS licenses will be issued for free, whereas PCS licensees had to pay for both their licenses and for the cost of relocating incumbents.

In any event, even if negotiating relocation agreements is somehow more difficult for MSS than for PCS, that cannot excuse MSS licensees from their obligation to pay the cost of relocating public safety and other incumbents. Fairness sometimes has a price. The PCS industry had also complained bitterly regarding the cost and difficulty of negotiating relocation. Yet the PCS/microwave relocation process appears to be working well, with large numbers of microwave paths already cleared through voluntary negotiations, and PCS service being offered to the public in many markets around the country.

The MSS Coalition also suggests that MSS is supposedly different than PCS since MSS may be able to share spectrum with incumbent microwave users. However, the PCS industry had also claimed that it could share spectrum, which did not deter the Commission from imposing a relocation obligation. Furthermore, if sharing proves to be as successful as some MSS proponents claim, relatively few incumbents will need to be relocated. The MSS Coalition also suggests that incumbents will stop cooperating with sharing studies if they have the opportunity to be reimbursed for relocation. However, current law already requires reimbursement and that has not deterred incumbent associations from participating in the sharing discussions. Denial of the MSS Coalition petition will not alter that cooperation.

Finally, the MSS Coalition argues that any requirement to reimburse incumbents will discourage non-U.S. MSS providers, such as ICO, from entering the U.S. That argument turns the Commission's public interest obligation completely on its head. The MSS Coalition would have the Commission require that state and local government public safety agencies, and therefore taxpayers, bear the cost of clearing radio spectrum so that a

foreign entity can enter the domestic communications market. Where is the public interest in that position?

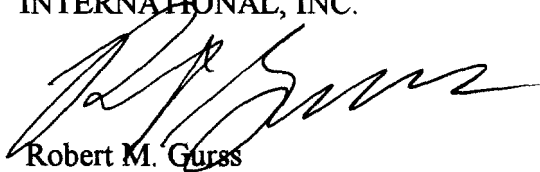
CONCLUSION

For the reasons set forth above, the Commission must not revise its determination that MSS licensees will be required to pay the cost of relocating microwave incumbents in the 2130-2150/2180-2200 MHz band.

Respectfully submitted,

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June 19, 1997

CERTIFICATE OF SERVICE

I, Jane Nauman, hereby certify that I have on this 19th day of June, 1997, caused copies of the foregoing Opposition of APCO to MSS Coalition Petition for Partial Reconsideration to be delivered via U.S. Mail, postage prepaid, to the following individuals at the addresses listed below:

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